

**Laborer's International Union of North America,
Local No. 721, AFL-CIO and Walter A. Willis
and Crouse Nuclear Energy Services, Inc. Cases
1-CB-4785, 1-CB-4833, and 1-CB-4839**

May 27, 1981

DECISION AND ORDER

On December 12, 1980, Administrative Law Judge Michael O. Miller issued the attached Decision in this proceeding. Thereafter, the General Counsel and Charging Party Crouse Nuclear Energy Services, Inc., filed exceptions and supporting briefs. Respondent filed limited cross-exceptions and a brief in support of its cross-exceptions as well as an answering brief to the General Counsel's and Charging Party Crouse's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order, as modified herein.³

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended

¹ The General Counsel and Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The General Counsel has excepted to the Administrative Law Judge's finding that Respondent complied with the Board's Order in *Laborers' International Union of North America, Local No. 721 (Scaldini, Inc.)*, 246 NLRB 691 (1979). Whether or not Respondent complied with a Board Order in a previous case is not a matter for determination by us in the instant proceeding and we therefore make no finding with respect to the issue.

In the eighth paragraph of sec. II.B. of his Decision, the Administrative Law Judge referred to Lloyd Dyal as the project manager for Crouse Nuclear Energy Services, Inc. While the record indicates that Dyal did occupy that position at the time of the hearing, it also reveals that, at the relevant times herein, Dyal had been employed as Crouse's construction superintendent.

² In finding that Respondent did not unlawfully deny job referral to Walter A. Willis between March 1979 and March 1980, we rely solely upon the Administrative Law Judge's crediting of Business Manager Louis Palavanchi that Willis did not request referral during that period. We therefore place no reliance upon the Administrative Law Judge's comments in fn. 6 of his Decision.

In the 20th paragraph of sec. II.A.2. of his Decision, the Administrative Law Judge referred to *Dairylea Cooperative Inc.*, 219 NLRB 656 (1975), enf'd. sub nom. *N.L.R.B. v. Milk Drivers & Dairy Employees Local 338, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 531 F.2d 1162 (2d Cir. 1976). Chairman Fanning emphasizes, in accordance with his dissenting opinion in that case, that he would not find clauses in collective-bargaining agreements providing seniority for union stewards which go beyond layoff and recall to be presumptively invalid.

³ We will modify par. 1(a) of the Administrative Law Judge's recommended Order to conform more closely to Conclusion of Law 1.

Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Laborer's International Union of North America, Local No. 721, AFL-CIO, Brockton, Massachusetts, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Restraining and coercing employees by blocking the ingress and egress of employees and others attempting to enter or leave the Pilgrim Nuclear Power Station through Respondent Union's picket line, and by jumping on, rocking, damaging, or hitting vehicles crossing through the picket line."

2. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

**NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL NOT restrain or coerce employees by blocking the ingress and egress of employees and others attempting to enter or leave the Pilgrim Nuclear Power Station through our picket lines, or by jumping on, rocking, damaging, or hitting vehicles crossing through the picket lines.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

**LABORER'S INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL NO. 721,
AFL-CIO**

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge: These cases were heard by me in Boston, Massachusetts, on September 2 and 3, 1980,¹ based on charges filed by Walter A. Willis, an individual, herein called Willis, and Crouse Nuclear Energy Services, Inc., herein called Crouse, and complaints and amended complaints issued on behalf of the National Labor Relations Board, herein called the Board, by the Regional Director for Region 1 of the Board.² The complaints in Cases 1-CB-4785 and

¹ All dates hereinafter are 1980, unless otherwise specified.

² The charges in Cases 1-CB-4785 and 1-CB-4833 were filed by Willis on February 12 and April 8, 1980, respectively, and the latter charge was amended on May 19, 1980. The charge in Case 1-CB-4839 was filed by

Continued

1-CB-4833 allege that Laborer's International Union of North America, Local No. 721, AFL-CIO, herein called the Union, violated Section 8(b)(1)(A) and (2) of the Act by threatening Willis, by arbitrarily and discriminatorily refusing to refer him to employment, and by denying him overtime assignments because he filed a charge and gave testimony against Respondent in a prior case. The complaint in Case 1-CB-4839 alleges that the Union violated Section 8(b)(1)(A) of the Act by picket line activity, blocking egress and ingress at the Pilgrim Nuclear Power Station, herein called the Pilgrim Station, and by damaging cars in the course of its picket line activities. Respondent's answers deny the commission of any unfair labor practices.

All parties were afforded full opportunity to appear, to examine and to cross-examine witnesses, and to argue orally. General Counsel, Respondent, and Crouse have all filed briefs, which have been carefully considered.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. CROUSE'S BUSINESS AND THE UNION'S LABOR ORGANIZATION STATUS—PRELIMINARY CONCLUSIONS OF LAW

Charging Party Crouse is a Delaware corporation with its principal office and place of business in Linfield, Pennsylvania. At all material times it has been engaged in providing general maintenance and plant modification services for nuclear power plants, including Pilgrim Station in Plymouth, Massachusetts. Jurisdiction is not in issue. The complaints allege, and Respondent's answer to the complaint in Case 1-CB-4839 admits, that Crouse meets the Board's standards for the assertion of jurisdiction over nonretail enterprises and is engaged in commerce within the meaning of the Act. I therefore find and conclude that Crouse is an employer, engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

The complaints allege, Respondent admits, and I find and conclude that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Cases 1-CB-4785 and 1-CB-4833

1. Background

Walter A. Willis has been a member of the Union since 1970. In July 1978, together with another member, Bruce A. Malaguti, Willis filed unfair labor practice charges against the Union. Those cases went to hearing before an administrative law judge on March 19, 1979, and, following a full stipulation of fact and a joint motion to transfer the proceeding directly to the Board

for decision, resulted in a Board Order which issued on December 4, 1979, *Laborers' International Union of North America, Local No. 721 (Scaldini, Inc.)*, 246 NLRB 691 (1979). Briefly stated, at issue therein was the Union's filing of intraunion charges against Willis and Malaguti for refusing to obey the order of Business Manager Louis Palavanchi to participate in a work stoppage against their employer, the Union's fining each of those individuals pursuant to those charges, and the Union's efforts to cause the discharges of Willis and Malaguti after they had been suspended from union membership following their failure to pay the fines assessed against them. On the stipulated record, the Board concluded that Respondent had violated Section 8(b)(1)(A), and (2) of the Act by its conduct in fining Willis and Malaguti for refusing to engage in a Union-authorized work stoppage and by attempting to cause their discharge. Respondent complied with the Board's Order.

2. Palavanchi's alleged threat and refusal to refer Willis

The Union maintains a hiring hall for the referral of laborers to employers with whom it has collective-bargaining agreements. The agreement specifically governing its dealings with Crouse, known as the General President's Project Maintenance Agreement, herein called the Project Maintenance Agreement, provides that the signatory contractors recognize the signatory unions "as a source of employment referrals." It states, additionally:

The appropriate Unions will be contacted and shall refer all applicants for employment to this project according to the standards and criteria uniformly [sic] applied to any maintenance project in the area.

* * * * *

The above shall not restrict the Contractor from soliciting and hiring qualified personnel from any other source, provided the Unions are unable to fulfill manpower requirements within forty-eight hours, emergencies excluded.³

Willis testified that between 7:30 and 8 a.m. on a morning in the week of March 19, 1979 (March 19 being the day that the hearing in the prior case was held), he went to the Laborers hall seeking work. Only Palavanchi and he were present, he said. He asked Palavanchi whether there was any work and requested that his name be placed on the referral list. Palavanchi said he would do so and would call him if there was work. Then, according to Willis, Palavanchi said, "There are a lot of people that want to work with you and I have a job that I want to send you on." When Willis asked Palavanchi

Crouse on April 16 and was amended on May 16, 1980. The complaint in Case 1-CB-4785 issued on March 28; it was amended and consolidated with the complaint issued in Case 1-CB-4833 on May 27. The complaint in Case 1-CB-4839 issued on May 21, 1980. All of these cases were consolidated for hearing by Order dated August 6, 1980.

³ The Building and Site Construction Agreement between the Union and the Associated General Contractors, herein called the Building Agreement, applicable to construction work within Local 721's jurisdiction, contains similar terms. The record contains no evidence establishing the relationship between the two agreements or the applicability of the Building Agreement to Crouse's employees at Pilgrim Station, except that Crouse management testified to applying certain terms of the Building Agreement at that site.

why he would say that, Palavanchi did not reply. Willis received no job referrals.

Willis testified that he returned to the union hall in late December 1979 or early January 1980⁴ to look for work and to put his name on the referral list again. Again he claimed that no one else was present. When he made his request to Palavanchi, Palavanchi allegedly repeated, "That there was a job that he wanted me to go on, he had for me, after this case was all over with and he referred again to the fact that he had people that wanted to work with me . . ." Again, according to Willis, he asked why Palavanchi would make such a statement and Palavanchi had no answer.

Willis received no job referral until after he returned to the union hall, allegedly for the third time, on March 12.

Palavanchi flatly denied seeing or speaking to Willis between March 19, 1979, and March 12, 1980. Although Palavanchi testified that he had referred to his referral list and records to refresh his recollection as to whether or not Willis came to the hall the week of March 19, 1979, and concluded that he had not, no records were introduced to establish either that Willis had registered at the hall or that he had not. Palavanchi testified that, considering the number of people out of work in both March and December 1979, and considering the practice of laborers looking for work, it would have been highly unlikely for Willis to come to the hall at the hours he testified and not see a number of other job seekers there.

According to Palavanchi, it was his general practice to exhaust Local 721's referral list before calling for people from outside the Local unless contractors called for particular skills which those on his list did not have. General Counsel introduced records of laborers who were not members of the Union, but were members of other locals, who were hired at Pilgrim Station by Crouse in November and December 1979 and January, February, and March. Palavanchi acknowledged that at least two of these, Young and Woodburn, were members of other locals who were sent to the job without having been on the referral list. He stated that while there may have been a number of unemployed Local 721 members, including some on the referral list, it was possible that there were none who were willing to work at a nuclear power plant. As noted, Palavanchi contended that Willis had not applied for and was not on his referral list during this period.

Assuming that Louis Palavanchi made the statements which Willis attributed to him,⁵ I am unable to conclude,

as General Counsel would have me do, that Palavanchi threatened Willis either impliedly or directly. It may be that the words attributed to Palavanchi by Willis, if given a particular inflection, or if uttered in a context otherwise threatening, could be deemed to be a threat. No such evidence exists herein; the alleged statements are as susceptible of noncoercive interpretations as they are as threats. Accordingly, to the extent that General Counsel's complaint alleges that Palavanchi threatened Willis by these statements, I shall recommend that it be dismissed.

Similarly, I must conclude that General Counsel has failed to sustain his burden of proving that Willis was discriminatorily denied job referrals between March 1979 and March 1980. General Counsel has not established by a preponderance of the evidence that Willis sought referrals during this period, that Palavanchi bore animus toward Willis or that Willis was illegally passed over. Therefore, I shall also recommend that this allegation of General Counsel's complaint be dismissed.⁶

On March 12, Willis went to the union hall. He took along a witness, he testified, to make sure that his name got on the referral list. On the following day, Respondent called and referred him to Crouse for a laborer's job at Pilgrim Station. He reported on March 14 and worked the remaining 2 days in that week and all of the following week. At his own request, for personal reasons, he did not work between March 24 and 30. He continued to work thereafter missing a portion of 1 day. Through April 5, Willis worked substantial overtime, 6 or 7 days per week, 12 hours per day.

Through April 2, Crouse's laborer crews worked extensive regularly scheduled overtime. On April 2, Boston Edison Company (BECO), the owner of Pilgrim Station, directed that the regularly scheduled overtime be eliminated. All overtime, from that date forward, was to be specifically directed by BECO. As a result, a number of the laborer crews ceased to work overtime.

The Building and Site Construction Agreement provided that "[the] steward shall work on the job until completion of all work covered by the terms of this Agreement performed by the Employer and *shall work all overtime performed by the Employer . . .*" (Emphasis supplied.) Crouse applied this contractual provision at Pilgrim Station by order of Labor Superintendent Frank Jones. However, the Project Maintenance Agreement di-

chi's credibility on the basis of any adverse reputation for truth and veracity. See Rule 608(a)(2), Federal Rules of Evidence.

⁴ As noted, the Board's decision had issued on December 4, 1979.

⁵ I noted no defects in Palavanchi's demeanor on the witness stand which would serve as a basis for discrediting his testimony. On the other hand, I was not particularly impressed with Willis' testimony or demeanor and found his assertions that no other job applicants were at the hall on the two occasions when he approached Palavanchi difficult to accept. Accordingly, to the extent that there are credibility conflicts between Willis and Palavanchi, I would credit the testimony of Palavanchi. In reaching this conclusion I have placed no reliance on the testimony of the various witnesses proffered by Respondent who testified in regard to Palavanchi's reputation in the community for truth and veracity. Upon reconsideration, I hereby reverse my ruling made at the hearing permitting the introduction of such evidence. At the point at which such evidence was offered, General Counsel had not sought to impeach Palavanchi.

⁶ Ideally, a union maintaining an exclusive hiring hall would possess and retain adequate records to establish the propriety of its referrals if called upon to do so. The law, however, imposes no such requirement. See *Local 394, Laborers' International Union of North America, AFL-CIO (Building Contractors Association of New Jersey)*, 247 NLRB 97 (1980). Moreover, even if I were to draw an adverse inference from Respondent's failure to volunteer such records as it might have had (see *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15 (1977)), I would be unable to conclude that Willis had been discriminatorily denied referrals. Such a conclusion would require that additional inferences as to the existence of animus and the absence of honest oversight or legitimate reasons for the referral of others be drawn from the initial inference and, as the Board has stated, "We cannot subscribe to the finding of a violation here through a process of piling one inference upon another." *Diagnostic Center Hospital Corp. of Texas*, 228 NLRB 1215, 1216 (1977).

rectly applicable to the work at Pilgrim Station contained no such provision.

On April 7, Willis was working on a crew under Foreman Earl Fowler. Fowler was a union member but he held no position in the Union. He received his appointment as a foreman from the general foreman and, as foreman, received approximately 50 cents per hour more than the other laborers. The record does not establish that the Union played any role in the appointment of Crouse's foremen.⁷

Fowler's crew worked 11-1/2 hours on April 7 and 8. Willis, however, did not work any of that overtime. On April 7, about 3:30 p.m., Laborer General Foreman James Levesque⁸ had told Fowler to send one man home. Levesque did not suggest who it should be. Fowler selected Willis as the one to be sent home, testifying that he did so because of his observations of Willis' work and the fact that Willis had missed a number of days in the prior weeks. According to Willis, Fowler told him that the union steward, Andrews, would be bumping in.⁹ Andrews came on to Fowler's crew about 4 p.m. and worked 3-1/2 hours overtime.

On April 8, according to Willis, Fowler again told him that Andrews was bumping him off the crew for overtime purposes. Willis objected and asked Laborer Superintendent Frank Jones and Levesque why Andrews was bumping him twice in a row. Andrews, coming around the corner and apparently hearing Willis' question, told Willis, "I don't have to justify anything to you."¹⁰ Willis did not work overtime on April 8. He and certain others on that crew were sent home upon completion of an 8-hour shift. Others on that crew, not including Andrews, worked overtime. Andrews worked overtime that night, but on another crew. Fowler admits that he selected Willis to be sent home on April 8 as he had on April 7.

There is no evidence to establish that either Louis Palavanchi or Andrews played any role in the selection of Willis as one of the employees who would not work overtime on April 7 and 8. Neither is there any substantial evidence to establish that the Union had a role in the selection of individuals, generally, for overtime. Thus, while Howard Bailey, Crouse's project manager, testified that discussions as to who would work overtime would be held between the superintendent, the general foreman, and the union steward, and said that the steward could make recommendations in regard to selection for overtime, neither the superintendent, the general foreman, nor the steward corroborated his testimony. Andrews denied that he played any role in selection. Jones, the

labor superintendent, and the various foremen who were directly involved in the assignment of overtime, corroborated Andrews' testimony.

On April 9, Willis was transferred to another crew, one that worked five 8-hour days per week, without overtime. According to Willis, he had been told by Fowler that he was being switched off of Fowler's crew because the men did not want to work with him "[b]ecause of union problems and things like that." Fowler did not contradict this testimony. Labor Superintendent Jones testified that he was responsible for transferring Willis to another crew; he said that he had been told by Foreman Kenneth Trajano that two employees had complained about working with Willis, stating in effect that he was not doing his share of the work. Willis worked on several different crews between April 9 and 15.

On April 15, according to Willis, he was in the foremen's trailer with Foreman Ken Trajano when Trajano received a call informing him that a laborer was needed on Foreman Teixeira's crew, No. 117. That crew was still working a 7-day, 11-1/2-hour shift, according to Willis. Trajano assigned Willis. As Willis was heading toward where the No. 117 crew was working, he heard Teixeira page Levesque on the intercom. Willis picked up the intercom, eavesdropped on their conversation, and allegedly heard Teixeira say, "Kenny [Trajano] says that Willis can't work more than regular shift, can't work any overtime, are you going to send anybody else up here?" Levesque allegedly replied that he would get back to Teixeira on that question. Levesque, however, denied that he had any such conversation. The record does not indicate what, if anything, transpired when Willis got to Teixeira's crew, or thereafter.

Several of Respondent's witnesses testified that it was not unusual for employees to be switched among various crews.

General Counsel contends that Respondent caused or attempted to cause Crouse to deprive Willis of overtime and that Respondent, through agents functioning as job stewards and laborer foremen, have arbitrarily and capriciously controlled and administered the overtime system. The record utterly fails to support these contentions. There is no substantial evidence that the Union's steward or its business manager played any role in the assignment of overtime, either generally or specially in regard to Willis. Neither is there evidence to support the contention that the laborer foremen were agents of the Union. The Union did not participate in their selection as foremen, either by recommendation or appointment; their selection rested solely in the hands of Crouse's management. Moreover, none of the foremen involved herein were or had been union officers at any time in the recent past. The mere fact that they were members of the Union is not sufficient to establish that they were also its agents. *Tower Hotel Company, d/b/a Holiday Inn Riverfront*, 250 NLRB 99 (1980). Compare *International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (McCarty and Armstrong)*, 185 NLRB 642 (1970), where the foremen's ties to, and control by, their union were far more extensive than those of the foremen

⁷ As acknowledged by General Counsel in his brief, under the Project Maintenance Agreement, the Union had no role in the selection or appointment of foremen for Crouse or at Pilgrim Station. That power was specifically reserved to, and exercised by, management. However, under the Building and Site Construction Agreement, the Union had the authority to appoint every second foreman, subject to approval by the employer.

⁸ Levesque was also a member of Local 721.

⁹ Fowler did not believe that he knew, when Willis left the job on April 7, that Andrews would be replacing him. Andrews, he recalled, was sent to his crew when the manpower requirements were changed sometime after Willis had already been sent home.

¹⁰ While there is some confusion surrounding the circumstances of Willis being sent home on April 8, there was no denial of the statement which Willis attributed to Andrews.

herein. Further, I would not find an agency relationship based upon the assertion that these foremen might be beholden to the Union for past or future referrals as laborers or foremen. Accordingly, I shall recommend that these allegations be dismissed.

I further find that Andrews' statement to Willis, to the effect that he did not have to justify bumping Willis from overtime work, did not violate Section 8(b)(1)(A) of the Act. In the instant case, the practice and the Building and Site Construction Agreement privileged the steward to work all overtime. While General Counsel contended that Respondent controlled the assignment of overtime to laborers and violated the Act by assigning overtime in arbitrary and capricious ways, it did not contest the legality of the provision which gave stewards priority for overtime work. Such a provision is not necessarily unlawful. See *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 1331 (Chrysler Corporation)*, 228 NLRB 1446 (1977). See also *Dairylea Cooperative Inc.*, 219 NLRB 656 (1975). In light of the uncontested propriety of this provision, it cannot be said that Andrews' statement that he did not have to justify bumping Willis from overtime work restrained or coerced Willis. Accordingly, I shall recommend that this allegation of the complaint also be dismissed.

B. Case 1-CB-4839

On April 1, the laborers employed by Crouse staged a walkout.¹¹ Other crafts joined the walkout.

Business Manager Palavanchi was aware of the laborers' walkout and came to the construction gate where most of the laborers and other employees were congregating and picketing around noon on April 1. While there, he appointed John Andrews, the Union's steward, to be in charge of the picket line activity. He also met with the police officers in charge at the scene. Palavanchi assured the police of the Union's cooperation in keeping the picketing orderly and peaceful and advised the police as to where he could be reached if there were any problems.

Police Sergeant Louis Cappella, of the Plymouth, Massachusetts, police force, was the officer in charge at the scene of the walkout during the day on April 1 and was there, along with other police officers, from the morning hours until 4:30 or 5 p.m. He described the scene as "a routine strike situation," where everyone obeyed the requests of the police. He described the following scene: more than 100 people were in the immediate area of the construction gate with another 50 or 60 in the surrounding area. The pickets patrolled across the road, carrying signs. As cars approached the line the pickets would part or, on occasion, the police would move them apart to allow vehicles to enter. Some cars

crossed through the line, some backed off, and left. There were no arrests and Cappella received no reports of damage to any of the vehicles. Nothing occurred which caused Cappella to call Palavanchi. In the course of the picketing, Cappella recognized several union members who were foremen on the jobsite, including Trajano and Texeira.

In addition to the construction gate where the largest group of employees had gathered, there were two other gates, the main gate and the shore gate. Sergeant Cappella sent police officers to check the other entrances; no picketing or incidents were reported at those locations.

Similarly, Police Sergeant Robert Webb was in charge of the police at the construction gate from approximately 4:30 p.m. on April 1 until approximately 2 a.m. on April 2. His description of the picketing was similar to Cappella's except that there were fewer pickets present in the evening. He observed union steward Andrews at the site and spoke to him briefly, directing him to let cars enter and leave the site. Only one incident of damage to a vehicle was reported to him; someone had let the air out of a car's tires down in the parking lot, which was more than 1000 yards from the area of the picketing. Webb returned at 7 a.m. on April 2 and observed a small group of pickets continuing to walk in the area of the construction gate. Vehicles entered and left.

Crouse's Laborer Superintendent Jones testified that he went out to the picket line at about noon on April 1 to talk to Louis Palavanchi, riding in a van to the junction of Rocky Hill Road and the access road. The vehicle was not impeded in any way when he did so. He got out and talked to Palavanchi and Andrews. As the van drove back in, the driver stopped in the crowd of pickets to talk to someone; while he did so, Foreman Kenneth Trajano came over to them and asked what they needed. While stopped in the midst of the pickets there was noise like the slapping of hands on the side of the truck. Jones drove out again at 4 p.m., in line with other cars, and as they did so they stopped and spoke to a few of pickets. All the cars went through without being impeded, he testified.

Crouse's fuel accountant, Michael Davis, testified that he attempted to enter through the construction gate about 12:30 p.m. on April 1. About 40 people were milling around and Davis stopped. The guard advised him not to try to enter. Davis saw Foreman Trajano and asked if Trajano thought he could get in. Trajano told him "It's up to you, Mike." When Davis decided not to attempt to enter, Trajano allegedly thanked him for his support. Davis saw other union member-foremen on the line and saw Louis Palavanchi several car lengths away from the line of pickets. He described the pickets as walking in a circle, in front of the gate, approximately 3 to 4 feet apart from one another.

Crouse's project manager, Lloyd Dyal, drove to the main gate about 2 p.m. on April 1. He saw about 12 men there, some of whom were carrying signs which said something to the effect that Crouse was unfair or that there were unsafe practices. He did not attempt to enter. At 5 or 5:30 p.m., Dyal attempted to drive through the construction gate where he saw 100 to 150 workers con-

¹¹ Though the walkout was sanctioned by the Local Union, the record does not conclusively establish its causation. One of the reasons may have been the layoff of certain laborers, including Peter Palavanchi, the brother of the business manager. Another might be Crouse's refusal to accede to Palavanchi's position that the laborer foremen have a voice in the selection of individuals for layoff. It is not essential to the resolution of the issues presented herein to determine why the laborers went on strike.

gregating. He saw union steward Andrews over to the side of the group and drove over to talk to Andrews. When he eased his car into the crowd of pickets, some of them jumped on the hood of his car and rocked it. According to Dyal, he panicked and drove on through. As he did so, the windshield wipers and some of the chrome were broken off his car. Some of the pickets chased him down the road toward the parking lot. He subsequently drove out of the site, in a convoy of cars. He said that it was "tight" but they got out. The following morning, Dyal observed that his car had four flattened tires.

Howard Bailey, Crouse's project manager at Pilgrim Station, left the site via the shore gate at about 5:30 p.m. on April 1. There were six to eight people congregating at the gate and a vehicle partially blocking it. He slowed down as he went through and, hearing a crash behind him, immediately turned to see someone who he believed to be Peter Palavanchi, the brother of the business manager, drop a piece of yellow pipe. The rear window on Bailey's car had been smashed in. He saw no union officers or stewards at the shore gate at that time.

Peter Palavanchi was a union member but held no office in the Union. He had been laid off on the day preceding the start of the work stoppage. Peter Palavanchi denied that he was at the construction site on April 1, claiming that he had been out searching for work all that day. He denied damaging Bailey's car.

General Counsel contends that by maintaining a picket line which blocked and impeded ingress to and egress from the Pilgrim Station, and by the conduct of its agents in damaging the vehicles of Bailey and Dyal, Respondent has violated Section 8(b)(1)(A) of the Act. Respondent denies that it unlawfully impeded ingress and egress and denies responsibility for the conduct of people who were not its agents.

In *Teamsters Local 860, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Delta Lines, Inc.)*, 229 NLRB 993 (1977), the Board succinctly stated the applicable agency principles:

In determining whether a union is responsible for the misconduct or persons engaged in picketing, the Board applies the "ordinary law of agency." The Board will, in applying these agency principles, impute the conduct of the union's pickets to the union only where it is shown that the union, either actually or impliedly, authorized the picket's conduct beforehand or ratified the conduct after it occurred. For example, where an authorized union representative such as a union official or picket captain participates in picketing misconduct or is present at the time the misconduct occurs, the Board will not hesitate to find that the union is responsible. Similarly, where the union has knowledge of its pickets' misconduct but fails to take steps "reasonably calculated" to control that misconduct, the Board readily imputes responsibility for the misconduct to the union. Where, however, pickets engage in misconduct which has been specifically forbidden by the union, and this misconduct is not brought to the union's attention, or is of an isolated or nonrecurring nature (so that the union has no opportunity

to prevent it from recurring), the union will not be held responsible for that misconduct. [Citations omitted.]

John Andrews, the steward, was present at the construction gate from early morning until late in the evening of April 1, and was specifically assigned, by Palavanchi, to be in charge of picketing. Applying the principles described above, I therefore conclude that the Union is responsible for whatever picket line misconduct occurred during the picketing at the construction gate.¹² The evidence indicates that the Union picketed at that location with a large number of employees and that vehicles attempting to enter or leave through that gate were delayed, at least for brief periods of time. On at least one such occasion, pickets rocked or jumped on a vehicle, damaging it, and on another, they slapped the vehicle. I find that the delaying of the vehicles, together with the rocking, jumping on, damaging, or banging on vehicles is sufficient to establish restraint and coercion of the employees who were either in the cars or in the vicinity. See *Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Stokvis Multi-Ton Corp.)*, 243 NLRB 340 (1979), and *General Teamsters, Chauffeurs and Helpers Local Union 298, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Schumacher Electric Corporation)*, 236 NLRB 428 (1978).

I cannot find, however, that the Union is responsible for the incident involving damage to the vehicle of Howard Bailey, which occurred at the shore gate. The shore gate was a quarter of a mile or more away from the junction of the access road and Rocky Hill Road where the majority of the pickets and other employees had gathered. No picketing was authorized at that location and no agents of the Union were stationed there or were involved in the incident. Even assuming that it could be concluded from the record herein that Peter Palavanchi was at the shore gate at 5:30 p.m. on April 1, and further that he smashed in Bailey's rear window, it cannot be said that the Union is responsible for his conduct. Peter Palavanchi is a union member and is the brother of the business manager. These facts, alone, are not sufficient to create an agency relationship. *Holiday Inn Riverfront, supra*. Neither were there incidents of such a recurring nature that one could place on the Union the obligation to police each of the gates. Accordingly, I shall recommend that this allegation of the complaint be dismissed.

CONCLUSIONS OF LAW

1. By blocking the ingress and egress of employees and others attempting to enter or leave the Pilgrim Nuclear Power Station through Respondent Union's picket line and jumping on, rocking, damaging, or hitting vehicles crossing said picket line, Respondent Union has restrained and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act and has en-

¹² It is neither necessary nor proper to impute responsibility to the Union from the presence of union member-foremen on the picket line. See *Holiday Inn Riverfront, supra*.

gaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Respondent has not engaged in any unfair labor practices not specifically found herein.

THE REMEDY

It having been found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby make the following recommended:

ORDER¹³

The Respondent, Laborer's International Union of North America, Local No. 721, AFL-CIO, Bracton, Massachusetts, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act by blocking the ingress and egress of employees and others attempting to enter or leave the construction site at the Pilgrim Nuclear Power Station through the Union's picket line and by banging, jumping on, damaging, or

rocking the vehicles of persons attempting to cross through the line.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its office and meeting halls copies of the attached notice marked "Appendix."¹⁴ Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by its representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Promptly, upon receipt of copies of the aforesaid notice from the Regional Director for Region 1, return to the Regional Director such number of copies of said notice as he may request for posting by Crouse Nuclear Energy Services, Inc., at its site on the Pilgrim Nuclear Power Station in Plymouth, Massachusetts, the Employer being willing, at places where the Employer posts notices to its employees.

(c) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaints issued in Cases 1-CB-4785 and 1-CB-4833 be dismissed in their entirety.

¹³ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹⁴ In the event that this Order is enforced by Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."